

AGENDA — January 31, 2006 Board Meeting

Proposed Board of Equalization Rules for California Tax Administration and Appellate Review - Chapter 1, Title, and Chapter 2, Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

<p>Action 1 — Resolved Issues</p> <p>See Exhibit 2</p>	<p>Adopt proposed Board of Equalization Rules for California Tax Administration and Appellate Review</p> <ul style="list-style-type: none"> • Chapter 1, Title • Chapter 2, Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees, Articles 1 – 6 and Article 7, Section 5000.2111
<p>Action 2 — Article 7, Section 5000.2110, Briefing Schedule</p> <p>Alternative 1 – Staff Recommendation (30/30/15 Schedule)</p>	<p>Adopt a briefing schedule:</p> <p>This briefing schedule is based upon the issuance of the Appeals Division's Decision and Recommendation and provides taxpayers with a full 30 days to prepare their opening briefs without affecting the length of the appeals process. This alternative requires that:</p> <ul style="list-style-type: none"> • The taxpayer file its opening brief within 30 days after the date the Appeals Division issues its Decision and Recommendation; • The Department's reply brief is due 30 days after the taxpayer's opening brief is due; and • The taxpayer's response is due 15 days after the Department's reply is due.
<p>Alternative 2 – (20/20/15 Schedule)</p>	<p style="text-align: center;">OR</p> <p>This briefing schedule is similar to the Board's current briefing schedule, but provides taxpayers 20 days to prepare their opening briefs by requiring that Notices of Hearing be issued 15 days earlier than current procedures require. This alternative presumes that:</p> <ul style="list-style-type: none"> • Notice of hearing will be issued 75 days before hearing; • Taxpayer's opening brief will be filed 55 days before hearing; • Department's reply brief will be filed 35 days before hearing; and • Taxpayer's response will be filed 20 days before hearing.
	<p style="text-align: center;">OR</p>

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Alternative 3 - (15/15/15 Schedule)	
	<p>Consists of the Board's current briefing schedule contained in California Code of Regulations, title 18, section 5075. This alternative presumes that:</p> <ul style="list-style-type: none">• Notice of hearing will be issued 60 days before hearing;• Taxpayer's opening brief will be filed 45 days before hearing;• Department's reply brief will be filed 30 days before hearing; and• Taxpayer's response will be filed 15 days before hearing.

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Action Item	Alternative 1 – Staff Recommendation (30/30/15 schedule)	Alternative 2 (20/20/15 schedule)	Alternative 3 (15/15/15 schedule)
Action 2 - Adopt Pre-Hearing Briefing Schedule (Subdivision (c) Opening Briefs, Subdivision (d) Reply Briefs, Subdivision (e) Response to Reply Brief):	Article 7: Optional Briefs for Oral Hearings Before the Board 5000.2110 Briefing Schedule (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional. (b) Briefs. (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief Counsel or his or her designee in accordance with section 5000.2111.	Article 7: Optional Briefs for Oral Hearings Before the Board 5000.2110 Briefing Schedule (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional. (b) Briefs. (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief Counsel or his or her designee in accordance with section 5000.2111.	Article 7: Optional Briefs for Oral Hearings Before the Board 5000.2110 Briefing Schedule (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional. (b) Briefs. (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief Counsel or his or her designee in accordance with section 5000.2111.

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Action Item	Alternative 1 – Staff Recommendation (30/30/15 schedule)	Alternative 2 (20/20/15 schedule)	Alternative 3 (15/15/15 schedule)
	<p>(2) Filing.</p> <p>(A) In General. All briefs shall be addressed and mailed to the Chief of Board Proceedings, at the following address, or hand delivered to the Board's headquarters office at 450 N Street in Sacramento, California:</p> <p>Chief of Board Proceedings, MIC: 80 State Board of Equalization P.O. Box 942879 Sacramento, CA 94279-0080</p> <p>(B) Electronic Filing. In lieu of mailing or hand delivery, briefs and other related appeals correspondence may be transmitted to the Board electronically (e.g., facsimile, e-mail). However, briefs and other related appeals correspondence may only be filed pursuant to this paragraph if they are transmitted to and received by the Chief of Board</p>	<p>(2) Filing.</p> <p>(A) In General. All briefs shall be addressed and mailed to the Chief of Board Proceedings, at the following address, or hand delivered to the Board's headquarters office at 450 N Street in Sacramento, California:</p> <p>Chief of Board Proceedings, MIC: 80 State Board of Equalization P.O. Box 942879 Sacramento, CA 94279-0080</p> <p>(B) Electronic Filing. In lieu of mailing or hand delivery, briefs and other related appeals correspondence may be transmitted to the Board electronically (e.g., facsimile, e-mail). However, briefs and other related appeals correspondence may only be filed pursuant to this paragraph if they are transmitted to and received by the Chief of Board</p>	<p>(2) Filing.</p> <p>(A) In General. All briefs shall be addressed and mailed to the Chief of Board Proceedings, at the following address, or hand delivered to the Board's headquarters office at 450 N Street in Sacramento, California:</p> <p>Chief of Board Proceedings, MIC: 80 State Board of Equalization P.O. Box 942879 Sacramento, CA 94279-0080</p> <p>(B) Electronic Filing. In lieu of mailing or hand delivery, briefs and other related appeals correspondence may be transmitted to the Board electronically (e.g., facsimile, e-mail). However, briefs and other related appeals correspondence may only be filed pursuant to this paragraph if they are transmitted to and received by the Chief of Board</p>

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Action Item	Alternative 1 – Staff Recommendation (30/30/15 schedule)	Alternative 2 (20/20/15 schedule)	Alternative 3 (15/15/15 schedule)
	<p>Proceedings in accordance with instructions provided by the Board.</p> <p>(C) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department.</p>	<p>Proceedings in accordance with instructions provided by the Board.</p> <p>(C) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department.</p>	<p>Proceedings in accordance with instructions provided by the Board.</p> <p>(C) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department.</p>
<p>(3) Format. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent, excluding exhibits. The Chief Counsel or his or her designee may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board</p>	<p>(3) Format. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent, excluding exhibits. The Chief Counsel or his or her designee may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board</p>	<p>(3) Format. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent, excluding exhibits. The Chief Counsel or his or her designee may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board</p>	

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	<p>Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief.</p> <p>(c) Opening Briefs. Any party that requested a Board hearing pursuant to section 5000.2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 30 days after the Appeals Division issues its Decision and Recommendation or Supplemental Decision and Recommendation.</p> <p>(d) Reply Briefs. Any party to a Board hearing may file a reply brief. A reply brief is a brief that</p>	<p>Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief.</p> <p>(c) Opening Briefs. Any party that requested a Board hearing pursuant to section 5000.2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.</p> <p>(d) Reply Briefs. Any party to a Board hearing may file a reply brief. A reply brief is a brief that</p>	<p>Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief.</p> <p>(c) Opening Briefs. Any party that requested a Board hearing pursuant to section 5000.2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 45 days before the Board hearing.</p> <p>(d) Reply Briefs. Any party to a Board hearing may file a reply brief. A reply brief is a brief that</p>

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	<p>is filed by a party to a Board hearing in response to an opening brief. A reply brief shall contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 60 days after the Appeals Division issues its Decision and Recommendation or Supplemental Decision and Recommendation.</p>	<p>is filed by a party to a Board hearing in response to any opening brief. A reply brief shall contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 35 days before the Board hearing.</p>	<p>is filed by a party to a Board hearing in response to any opening brief. A reply brief shall contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 30 days before the Board hearing.</p>
	<p>(e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief shall identify and only address new</p>	<p>(e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief shall identify and only address new</p>	<p>(e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief shall identify and only address new</p>

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	<p>issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 75 days after the Appeals Division issues its Decision and Recommendation or Supplemental Decision and Recommendation.</p> <p>(f) Additional Briefing.</p> <p>(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.</p> <p>(2) Non-Party (Amicus) Briefs. A person that is not a party to a</p>	<p>issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing.</p> <p>(f) Additional Briefing.</p> <p>(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.</p> <p>(2) Non-Party (Amicus) Briefs. A person that is not a party to a</p>	<p>issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 15 days before the Board hearing.</p> <p>(f) Additional Briefing.</p> <p>(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.</p> <p>(2) Non-Party (Amicus) Briefs. A person that is not a party to a</p>

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	<p>Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 30 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 15 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.</p> <p>(3) Additional briefing. In extraordinary situations, the Board</p>	<p>Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 30 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 15 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.</p> <p>(3) Additional briefing. In extraordinary situations, the Board</p>	<p>Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 30 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 15 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.</p> <p>(3) Additional briefing. In extraordinary situations, the</p>

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	<p>or the Appeals Division may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing shall be filed within the time specified by the Board or Appeals Division.</p> <p>(g) Briefs Filed by Unrepresented Taxpayers. Notwithstanding subdivisions (c), (d), and (e) of this section, a taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.</p>	<p>or the Appeals Division may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing shall be filed within the time specified by the Board or Appeals Division.</p> <p>(g) Briefs Filed by Unrepresented Taxpayers. Notwithstanding subdivisions (c), (d), and (e) of this section, a taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.</p>	<p>Board or the Appeals Division may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing shall be filed within the time specified by the Board or Appeals Division.</p> <p>(g) Briefs Filed by Unrepresented Taxpayers. Notwithstanding subdivisions (c), (d), and (e) of this section, a taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.</p>